



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

February 3, 2021

Sara Lang
Attorney for Councilmember Hall
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-21-009

Dear Ms. Lang:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

May Councilmember Hall participate in City discussions involving the Hall Vineland, LLC (“Hall Vineland”) development, also known as Hall Winery, where his spouse is an employee of a garbage service provider that may provide services to the new development?

CONCLUSION

Yes. Where the financial impact of decisions regarding a development would foreseeably result in a potential garbage service contract providing additional annual revenue of less than \$10,000 to his spouse’s employer, the official is not prohibited from taking part in the decisions under the Act. (Regulations 18702.1(a)(2)(A) and (B), 18702.3(a)(4).)

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS AS PRESENTED BY REQUESTER

Eric Hall was sworn in as a St. Helena City Councilmember in December 2020. Councilmember Hall's wife is the Chief Operating Officer of Upper Valley Disposal Services ("UVDS"), a private corporation that provides garbage collection services in Napa County. Her position is salaried, and she holds no ownership interest in UVDS.

Hall Vineland (no relation to Councilmember Hall) owns a parcel of land within the jurisdiction of the County of Napa ("County"), which is outside the jurisdiction of the City of St. Helena ("City"). Hall Winery also is located outside the jurisdiction of the City. In 2017, Hall Vineland demolished a two-acre mobile home park owned by the Winery that was situated on this parcel of land. Hall Vineland had planned to install 20 to 25 high-end mobile homes to serve as a hospitality property for Winery guests. The County approved the plan prior to demolition, contingent on Hall Vineland's procurement of a "will serve" letter for water from the City. The City has provided water to the parcel since the 1960's. The City has no authority over the development plan for this parcel, as it falls within County jurisdiction. The County approved the development plan for this parcel with the contingency that Hall Vineland confirm that the City will continue to provide water to the site.

In 2016, Hall Vineland requested and received from the City a "will-serve" letter confirming that the City will continue to provide water to the site. In 2018, however, the City informed Hall Vineland that it was rescinding the will-serve letter. In 2019, Hall Vineland accused the City of an unlawful taking (depriving the parcel of water and effectively killing any usage of the site) and is litigating over the issue. The City currently is working with Hall Vineland to settle the matter. UVDS is not involved in any way in the City's water issue with Hall Vineland.

UVDS had provided garbage collection service to the mobile home parcel in the past, and may provide services in the future, if Hall Vineland is able to move forward with the development. Before the old mobile home park was demolished, the parcel had 19 individual garbage cans, paid separately by each mobile homeowner. UVDS currently has no income from this property. Other than his spouse's employment with UVDS, Councilmember Hall has no other economic interests involved in this matter.

If Hall Vineland is permitted to move forward with the proposed hospitality development, the new setup likely will have a dumpster pavilion, which will hold two large bins. Although UVDS is not the only service provider in the area, it is reasonable to assume that Hall Vineland will contract with UVDS for its waste services. UVDS is the most widely used since they entered a franchise agreement with the Upper Valley Waste Management Agency, a Joint Powers Authority (whose members are comprised of the County and related cities). Any residential or commercial user may opt to self-haul or hire other specialized haulers. According to UVDS, they would charge \$7,500 annually to provide the dumpster service to the site once developed, and net \$800 annually from those fees above costs.

ANALYSIS

Conflict of Interest under the Act

The Act's conflict of interest provisions prohibit any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. (Section 87100.) A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Relevant to these facts, Section 87103 defines a financial interest to include:

- (a) Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more; or is a director, officer, partner, trustee, employee, or holds any position of management.
- (b) Any source of income, aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

Councilmember Hall has a potential business interest and a source of income interest in UVDS due to his spouse's employment with the company. At issue is whether the City decisions related to providing water to Hall Vineland at the development site will result in a reasonably foreseeable and material financial impact on his interest in UVDS.

Foreseeability and Materiality

A financial effect is presumed reasonably foreseeable where the official's financial interest is explicitly involved as a named party in, or subject of, the decision. (Regulation 18701(a).) A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract, with the financial interest, including any decision affecting a property interest as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).) Based on the facts, UVDS is not the subject of the City's Hall Vineland water decisions. Where, as the facts indicate here, the financial interest is not explicitly involved in the decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (18701(b).) You have identified that it is reasonably foreseeable that the decisions may result in a potential service contract for UVDS if the development moves forward.

Looking to whether the decisions may have a material financial effect, Regulation 18702.1 provides, in relevant part, that the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity, including a business entity that is a source of income to the official, is material where the decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or greater than \$1,000,000, or five percent of the entity's annual gross revenues and at least \$10,000. (Regulations 18702.1(a)(2)(A) and (B), 18702.3(a)(4).) The reasonably foreseeable financial effect of a governmental decision on an official's business entity interest is also material

where the decision may cause the entity to incur, avoid, reduce, or eliminate expenses equal to or greater than \$250,000, or one percent of the entity's annual gross revenues and at least \$2,500. (Regulation 18702.1(a)(3)(B).) Based on the facts provided, there is no indication that the decisions will result in more or fewer expenses for UVDS. Moreover, UVDS's anticipated revenues from this site are below the \$10,000 minimum provided for in the regulation. Therefore, Councilmember Hall does not have a prohibitive financial interest in the City's decisions related to his spouse's employment with UVDS.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

LKH:aja